

likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in paragraph (d)(1)(i) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique qualifications, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and performance level.

(While performance level may be a factor used in defining the targeted category, performance level by itself is not sufficient to justify a retention allowance. Performance level may function as a supporting factor in authorizing an allowance or setting the allowance rate only to the extent it directly relates to the conditions in paragraph (d)(1)(i).)

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not more than 25 percent, of an employee's rate of basic pay for a group of category or employees which meets the conditions specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group retention allowance requests must include—(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category or employees meets the conditions specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other conditions and requirements for payment under this subpart

must be met before a retention allowance may be paid to any individual employee under paragraphs (d)(1) or (d)(2) of this section.

[56 FR 12838, Mar. 28, 1991, as amended at 60 FR 33327, June 28, 1995; 63 FR 34121, June 23, 1998; 64 FR 71634, Dec. 22, 1999]

#### **§ 575.306 Payment of retention allowance.**

(a) A retention allowance shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid in the same manner and at the same time as basic pay—i.e., the allowance shall be paid at an hourly rate for each hour during which the employee receives basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The head of an agency may not authorize a retention allowance for an employee if or to the extent that such an allowance, when added to the employee's estimated aggregate compensation, as defined in § 530.202 of this chapter, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year.

(c) Except as provided in § 575.307(a) of this part, an agency may continue payment of a retention allowance as long as the conditions giving rise to the original determination to pay the allowance still exist. However, at least annually, each determination to pay an allowance shall be reviewed by the agency to determine whether the payment is still warranted, and this determination shall be certified in writing by the approving official.

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

[56 FR 12838, Mar. 28, 1991, as amended at 58 FR 50249, Sept. 27, 1993; 60 FR 33327, June 28, 1995]

#### **§ 575.307 Reduction or termination of retention allowance.**

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary

## **§ 575.308**

to ensure that the employee's estimated aggregate compensation, as defined in § 530.202 of this chapter, does not exceed the rate for level I of the Executive Schedule at the end of the calendar year.

(b) The head of an agency may reduce or terminate payment of a retention allowance when it determines that—

(1) A lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(2) Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee (or group or category of employees);

(3) The agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all); or

(4) Budgetary considerations make it difficult to continue payment at the level originally approved (or at all).

(c) The reduction or termination of a retention allowance may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or any of the laws referred to in 5 U.S.C. 2302(d).

[56 FR 12838, Mar. 28, 1991, as amended at 58 FR 50250, Sept. 27, 1993; 64 FR 69182, Dec. 10, 1999; 64 FR 71635, Dec. 22, 1999]

### **§ 575.308 Internal monitoring.**

Each agency shall monitor the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

[60 FR 33327, June 28, 1995]

### **§ 575.309 Records and reports.**

(a) Each agency shall keep a record of each determination required by § 575.305(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular

## **5 CFR Ch. I (1–1–04 Edition)**

submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of retention allowances, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

## **Subpart D—Supervisory Differentials**

SOURCE: 56 FR 20338, May 3, 1991, unless otherwise noted.

### **§ 575.401 Purpose.**

This subpart provides regulations to implement 5 U.S.C. 5755, which authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee.

### **§ 575.402 Delegation of authority.**

(a) The head of an agency may pay a supervisory differential to a supervisor who is—

(1) In a General Schedule position paid under 5 U.S.C. 5332; and

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable locality rate of pay under 5 U.S.C. 5304, a special law enforcement adjusted rate of pay under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509),